

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EVE T. MANDELL,)
vs. Plaintiff,)
MICHAEL J. ASTRUE, Commissioner of) **ORDER**
Social Security,)
Defendant.)
Case No.: 2:13-cv-0012-GMN-PAL

ORDER

Pending before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Peggy A. Leen. (ECF No. 25). Plaintiff Eve Mandell filed an Objection, (ECF No. 26), to which Defendant Michael J. Astrue responded, (ECF No. 27). For the reasons discussed below, the Court will accept and adopt Judge Leen’s R&R in full.

I. BACKGROUND

Plaintiff brings this action against Defendant Michael Astrue in his capacity as the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g). (Compl., ECF No. 1-1). Plaintiff seeks judicial review of a final decision denying her claim for supplemental security income (“SSI”). (*Id.*).

Plaintiff filed a claim for SSI benefits on August 7, 2006, which was denied initially and upon reconsideration. (R&R 1:17-19, ECF No. 25). Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”), which was held on September 24, 2009. (*Id.* at 1:20-22). On February 12, 2010, the ALJ issued an unfavorable decision denying Plaintiff’s claim for benefits. (*Id.* at 1:21-22). Plaintiff timely requested that the Appeals Council review the ALJ’s decision. (*Id.* at 1:22-23). This request was subsequently granted, and on February 10, 2011, the Appeals Council reversed and remanded the case for further proceedings. (*Id.* at 1:23-24).

1 The case was considered by a different ALJ on remand, who issued a decision on September
2 23, 2011, finding that Plaintiff was not disabled and therefore not entitled to benefits. (*Id.* at
3 2:1-3). Plaintiff filed a request for the Appeals Council to review this decision, which was
4 denied on November 6, 2012. (*Id.* at 2:5-6).

5 This action was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §
6 636(b)(1)(B) and District of Nevada Local Rule IB 1-4. In her R&R, Judge Leen
7 recommended that this Court enter an order granting the Motion to Affirm, (ECF No. 21), and
8 denying the Motion to Remand, (ECF No. 18).

9 **II. LEGAL STANDARD**

10 A party may file specific written objections to the findings and recommendations of a
11 United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);
12 D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a *de novo*
13 determination of those portions of the Report to which objections are made. *Id.* The Court may
14 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
15 Magistrate Judge. 28 U.S.C. § 636(b)(1); D. Nev. IB 3-2(b).

16 **III. DISCUSSION**

17 This court may set aside the Social Security Commissioner's denial of disability benefits
18 only when the findings of the ALJ are based on legal error or are not supported by substantial
19 evidence in the record as a whole. Social Security Act §§ 216(i), 223, (codified at 42 U.S.C. §§
20 416(i), 423); *Bustamante v. Massanari*, 262 F.3d 949, 953 (9th Cir. 2001). "Substantial
21 evidence means such relevant evidence as a reasonable mind might accept as adequate to
22 support a conclusion." *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) (internal quotation
23 omitted). "Where evidence is susceptible to more than one rational interpretation, it is the
24 ALJ's conclusion that must be upheld." *Id.*

25 Here, Judge Leen found that the ALJ's decision was supported by substantial evidence,

1 and that the ALJ properly assessed Plaintiff's credibility as well as the appropriate weight to be
2 given to the opinions of Dr. Carolyn McKelvie, Plaintiff's treating physician. (R&R 26:13-
3 29:9).¹ Having reviewed Plaintiff's objections *de novo*, the Court finds no basis on which to
4 reject Judge Leen's findings and recommendations.

5 **IV. CONCLUSION**

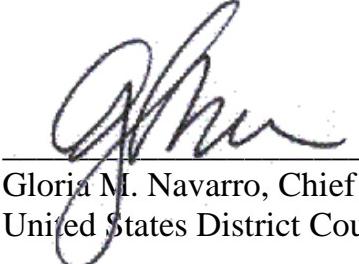
6 **IT IS HEREBY ORDERED** that the Report and Recommendation, (ECF No. 25), be
7 **ACCEPTED and ADOPTED** in full.

8 **IT IS FURTHER ORDERED** that the Motion to Affirm, (ECF No. 21), is
9 **GRANTED**.

10 **IT IS FURTHER ORDERED** that the Motion to Remand, (ECF No. 18), is **DENIED**.
11 The Clerk is instructed to enter judgment accordingly and close the case.

12 **DATED** this 10th day of March, 2015.

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Gloria M. Navarro, Chief Judge
United States District Court

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25 ¹ Plaintiff argues that the ALJ erred by failing to "recontact [Dr. McKelvie] for clarification" prior to making an adverse finding. (Pl.'s Obj. 3:19-21, ECF No. 26). However, Ninth Circuit precedent clearly holds that an ALJ need only state "specific and legitimate reasons supported by substantial evidence in the record" in order to reject the opinion of a treating physician. *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (internal quotation omitted). Therefore, the Court finds that the ALJ did not err by rejecting Dr. McKelvie's opinion without "recontacting" her.